

REMARKS

In the office action of October 19, 2004, all of the pending claims (1-7, 10-25 and 33-71) were rejected as unpatentable under 35 USC 103(a). Claims 1-2, 6, 7, 14-17, 22, 33, 37, 39, 43, 59 and 63-65 were rejected for obviousness over U.S. Patent No. 5,237,164 to Takada in view of U.S. Patent No. 6,355,024 to Small. The remaining claims were rejected over Takada in view of Small in combination with various other patents.

In addition, the Examiner pointed out that one of the documents in the recent information disclosure was not identified with sufficient particularity and therefore has not been considered on the merits.

In response to the office action, applicant has amended the pending claims to more clearly distinguish the prior art relied upon in the office action. As discussed in more detail below, the claims have been amended to set forth more specifically the material of the container, film or web that defines the light-absorbing segments of the negative image bar code. In addition, applicant is submitting a further information disclosure statement, more specifically identifying the previously submitted information.

**The Claimed Subject Matter Would Not Have Been
Obvious over Takada in view of Small**

The primary combination relied upon in the Office Action is Takada, as modified by Small. The Office Action relied upon this combination to reject most of the pending claims, and the combination of Takada and Small, as further modified by the teachings of other patents, was relied upon for the rejection of the remaining claims.

The Claimed Subject Matter

Turning to Claim 1, which is exemplary of the amendments made to each of the pending claims, Claim 1 is directed to a medical container having a negative image bar code. The container comprises transparent plastic film. A plurality of light-reflecting segments are disposed on that film. Unlike any teaching of Takada or Small, the container film itself (i.e., the transparent plastic film) defines light-absorbing segments between the light-reflecting segments.

As further set forth in Claim 1, the light-reflecting segments and the light-absorbing segments define a negative image bar code representing both fixed and variable information. The variable information comprises at least one selected from the group consisting of lot number, batch number, expiration

date, serial number, production time, price and concentration. As noted in the application, prior hot stamping systems for printing a bar code are particularly unsuited for printing variable information, which changes in a fixed time period, such as by the minute, hour or day. The negative image bar code, which contains both fixed and variable information, is detectable using a reader.

Takada and Small
Do Not Render the Claims Obvious

It is respectfully submitted that neither Takada alone nor Takada in combination with Small discloses or suggests the claimed medical container. Applicants have previously argued that the combination of Takada and Small fails to teach a bar code wherein the container itself forms part of the code. In response to this argument, the Examiner pointed out that "the Applicant recites that the 'container defines spaces,' but does not specifically disclose what the container is made out of, or what the container is not made out of. Therefore, the Examiner believes that the prior art reads on the claimed invention." (Office Action of October 19, 2004, page 14).

Accordingly, in response to the Examiner's comments, applicants have specifically amended each claim to call for

transparent plastic film upon which the bar code is disposed. The claims further require that the film defines spaces that separate the light-reflecting element and that the film defining the spaces (i.e., the transparent plastic film) also itself defines light-absorbing segments. As noted above, the light-reflecting segments and light-absorbing segments define a negative image bar code representing both fixed information and variable information. Unlike Takada or Small, no coating, label, sticker or background printing is required to provide the light-absorbing segments.

It is respectfully submitted that the claimed combination is not disclosed or suggested in Takada or Takada in combination with Small.

**Takada Does Not Disclose or
Suggest the Claimed Subject Matter**

Takada describes a card having a retroreflective bar code. As illustrated in Figure 4 of Takada, a dark portion 28b of the card substrate 28a can be formed by a printing process of black color to have a light absorption property. Takada states:

Referring to FIG. 4, there is shown a card substrate 28. A retroreflective material 29 is stuck to a bright portion 28a on the card substrate 28. The bright portion 28a reflects light incident thereon. A dark portion 28b of the card substrate 28 is left unchanged because it is not needed to reflect incident light. The dark portion 28b can be formed by a printing process of black color having a

light absorption property or the like.

Takada thus teaches that to form the bar code, the dark (light-absorbing) portion of the bar code is first printed on the card. This portion is then combined with the retroreflective material to form the bar code.

In contrast, as exemplified in Claim 1, the medical container, film or web of the present invention comprises transparent plastic film which itself defines the light-absorbing segments of the bar code. No paper, card, sticker or printing is necessary to define the light absorbing segments in the amended claims. Each of the other independent claims, as amended, recites a similar feature. In other words, unlike in Takada, the article claimed (for example, the container, medical container, web, film, etc., or the method for making the article) has a negative image bar code in which the transparent plastic film itself defines the light absorbing segments of the bar code. The bar code contains variable information or fixed information and variable information and is detectable by a reader.

It is respectfully submitted that the claimed combination is not described or suggested by Takada.

Small Does Not Render The
Claims Obvious In Combination With Takada

It is also respectfully submitted that Takada, even if modified by a teaching of Small, would not result in the claimed subject matter. Small states that the bulk container or delivery container may have an identifier 76 such as a magnetic strip that is readable by a computerized information system. However, Small specifically states:

"the identifier 76 may be a sticker containing, for example, a bar code, a radio frequency source or a micro chip, it may contain a variety of information such as product name, source, concentration, lot number, expiration date, whether the package has been previously used, etc" (emphasis added).

The use of a sticker, which is the contemplated arrangement in Small, is precisely what the present invention, at least in part, is trying to avoid.

Accordingly, modification of Takada in view of Small does not lead to the claimed invention, but leads away from it. The logical result of combining Takada and Small, even if there was motivation to make such a combination, would not be the claimed negative image bar code in which transparent plastic film of the container itself defines the light-absorbing segments. Instead, if Takada and Small were combined, the result would be a container having a sticker, in which part of the sticker employs

retroreflective material to increase readability of a bar code at a distance.

Therefore, it is respectfully submitted that even if Takada and Small were combined, the logical combination would not yield the claimed invention.

There Is No Motivation
to Combine Takada and Small

It is further respectfully submitted that the requisite motivation to combine Takada and Small is absent, because there has been no teaching or suggestion that it is important to read bar codes on medical containers from a significant distance, which is the focus of the teaching in Takada.

For reasons previously explained in detail in earlier presented arguments, Takada is nonanalogous prior art, and is directed to solving a problem that is not really existent in connection with bar codes on medical containers. Takada would appear to be of principal application to large industrial or commercial settings where, for example, company identification cards or the like need to be read at a great distance, such 10's of meters, and from a variety of different angles. Applicant is not aware of any suggestion in Takada or Small that such problems or objectives are associated with reading bar codes on

medical fluid containers. Typically those bar codes are read in proximity to the container such as at the medical station or dispensary where the contents of the container are being prescribed or administered to a patient. It is therefore respectfully submitted that there is no motivation for combining Takada and Small.

SUMMARY

In any event, neither Takada nor Takada in combination with Small describes or suggests the claimed invention in the present application, in which a negative image bar code representing variable or fixed and variable information is provided on transparent plastic film in which the film itself defines the light absorbing segments between the light reflecting segments of the bar code.

INFORMATION DISCLOSURE STATEMENT

In response to the office action of October 19, 2004, applicant is also submitting an additional information disclosure statement, specifically identifying the various components of the document previously submitted, in accordance with the MPEP.

CONCLUSION

For all of the above reasons, it is respectfully requested that the above identified application be reconsidered and allowed.

Respectfully submitted,

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By: Gary W. McFarron
Gary W. McFarron, Esq.
Registration No. 27,357
Cook, Alex, McFarron, Manzo,
Cummings & Mehler, Ltd.
200 W. Adams St., Suite 2850
Chicago, IL 60606
Telephone: (312) 236-8500

Attorney for Applicant